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SENATE

REPORT
No. 101

CONFERRING JURISDICTION ON THE COURT OF CLAIMS OF THE UNITED STATES TO HEAR, DETERMINE, AND RENDER JUDGMENT ON THE CLAIMS OF G. T. ELLIOTT, INC., AND M. F. QUINN

FEBRUARY 19 (legislative day, JANUARY 29), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 768]

The Committee on the Judiciary, to which was referred the bill (S. 768) conferring jurisdiction on the Court of Claims of the United States to hear, determine, and render judgment on the claims of G. T. Elliott, Inc., and M. F. Quinn, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to confer upon the Court of Claims of the United States to hear, determine, and render judgment upon the claim of G. T. Elliott, Inc., and the claim of M. F. Quinn, both of Hampton, Va., against the United States for compensation for damage allegedly sustained by said claimants by reason of the injury to their oyster beds, loss of leased oyster bottoms, loss of oysters and clams, in Willoughby Bay, Va., as a result of dredging operations carried on in behalf of the United States in connection with the establishment of aviation shore facilities at the naval air station, Norfolk, Va., in the years 1940 and 1941.

STATEMENT

An identical bill, S. 2244, was reported favorably to the Senate from the Committee on the Judiciary on December 21, 1950.

The claimants are lessees of oyster beds alleged to have been damaged when Willoughby Bay was dredged in 1940 and 1941, in order to provide greater depth for large seaplanes using the bay. The

Navy Department in its report states that numerous lessees, including present claimants, filed claims with the Navy Department after the dredging operations were completed but that all such claims were denied. Subsequently, several of the lessees, other than the present claimants, successfully prosecuted their claims in the United States Court of Claims, and in each case the judgment entered was in an amount substantially the same as that demanded in the original claims filed with the Navy Department.

The present claimants pursued administrative remedies in attempting to have their claim settled and were advised by Government officials that there was no way to pay the claim and that the only way that such claim could be paid was by private legislation. Records on file in the Senate Judiciary Committee substantiate these facts. While the claimants did have an adequate remedy at law, they pursued other means of obtaining their claims upon erroneous advice.

It is noted that the Department of the Navy states that the denial of the claims by the Navy Department in the first instance was not wholly justified.

The committee believes that this is one of the instances in which the facts are sufficient to justify the waiving of the statute of limitations and therefore recommends that the bill S. 768 be considered favorably.

Attached and made a part of this report are letters from the Department of Justice, dated November 22, 1949, and from the Navy Department, dated September 9, 1949.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSISTANT TO THE ATTORNEY GENERAL,
Washington, D. C., November 22, 1949.

Hon. PAT McCARRAN,
Chairman, Committee on the Judiciary, United States Senate,
Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2244) conferring jurisdiction on the Court of Claims of the United States to hear, determine, and render judgment on the claims of G. T. Elliott, and M. F. Quinn.

The bill would confer jurisdiction on the Court of Claims to hear, determine, and render judgment upon the claim of G. T. Elliott, Inc., and M. F. Quinn, both of Hampton, Va., against the United States for compensation for damage sustained by reason of the injury to their oyster beds, loss of leased oyster bottoms, loss of oysters and clams, in Willoughby Bay, Va., as a result of dredging operations carried on in behalf of the United States in connection with the establishment of aviation shore facilities of the naval air station, Norfolk, Va.

In compliance with your request, a report was obtained from the Department of the Navy concerning this legislation. That report, which is enclosed, states that claimants were lessees of oyster beds alleged to have been damaged when Willoughby Bay was dredged in 1940 and 1941, in order to provide greater depth for large seaplanes using the bay. The Navy Department states that numerous lessees, including claimants, filed claims with the Navy Department after the dredging operations were completed, but that all such claims were denied. It adds that subsequently several lessees other than claimants successfully prosecuted their claims in the United States Court of Claims. *Ballard Fish and Oyster Company v. United States* (107 Ct. Cls. 705). In each case the judgment rendered was in an amount substantially the same as that demanded in the original claims filed with the Navy Department.

The report states that in the case of the instant claimants the 6-year statute of limitations has now run. The Navy Department states that while there is no fact within its knowledge to explain claimants' failure to bring suit within the time provided by law, the judicial determination referred to above would indicate that there was some merit or legal basis to the claim, and that the denial of the claims by the Navy Department in the first instance was not wholly

justified. The report concludes with the statement that in view of the foregoing considerations, the Navy Department interposes no objection to the bill.

It is apparent from the bill that these claims, even if otherwise valid, are now barred by the 6-year statute of limitations (28 U. S. C. 2501), since the dredging operations were conducted in 1940 and 1941. No reason has been suggested why these claimants could not, by the exercise of reasonable diligence, have instituted suit prior to the expiration of the period of the statute of limitations. To waive the bar of the statute of limitations with respect to these claimants would amount to a discrimination in their favor against all other persons who have claims against the Government barred by the statute of limitations. Moreover, the bill would contravene the policy of Congress expressed in 28 United States Code 2501 without any apparent justification therefor.

In view of the foregoing, the Department of Justice is unable to recommend enactment of the bill.

The Director of the Bureau of the Budget has advised this Department that there would be no objection to the submission of this report.

Yours sincerely,

PETER CAMPBELL BROWN,
Acting the Assistant to the Attorney General

NAVY DEPARTMENT,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., September 9, 1949.

The Honorable J. HOWARD McGRATH,
The Attorney General, Washington, D. C.

SIR: Your request for comments on Senate 2244, conferring jurisdiction on the Court of Claims of the United States to hear, determine, and render judgment on the claims of G. T. Elliott, Inc., and M. F. Quinn, has been referred to this office by the Secretary of the Navy for the preparation of a report thereon.

The purpose of the bill is as shown in the title. Claimants were lessees of oyster beds alleged to have been damaged when Willoughby Bay, Va., was dredged in 1940 and 1941 in order to provide greater depth for large seaplanes using the bay.

Numerous such lessees, including the claimants, filed claims with the Navy Department after dredging operations were completed, but all such claims were denied. Subsequently, several lessees other than claimants successfully prosecuted their claims in the United States Court of Claims. *Ballard Fish and Oyster Company v. United States* (107 Ct. Cls. 705). The judgment rendered in each case was in an amount substantially the same as that demanded in the original claims filed with the Navy Department.

In the case of the claims now sought to be heard by authorizing legislation, the 6-year statute of limitations has now run. While there is no fact within the knowledge of the Navy Department to explain claimant's failure to bring suit within the time specified by law, the judicial determination, referred to above, would indicate that there was some merit or legal basis to the claim, and that the denial of the claims by the Navy Department in the first instance was not wholly justified.

In view of the foregoing considerations, the Navy Department interposes no objection to subject bill.

For the Secretary of the Navy.

Respectfully yours,

G. L. RUSSELL,
*Rear Admiral, United States Navy,
Judge Advocate General of the Navy.*

